



2026:DHC:5405-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 6<sup>th</sup> May 2026***

***Pronounced on: 7<sup>th</sup> July, 2026***

***Uploaded on: 7<sup>th</sup> July, 2026***

+ **CRL.A. 157/2018**

STATE

...APPELLANT

Through: Mr. Ritesh Kumar Bahri, APP  
with Ms. Divya Yadav & Mr.  
Lalit Luthra, Advs.

versus

PHOOL CHAND

...RESPONDENT

Through: Mr. Akhilesh Lakhanlal Kamle  
and Mr. Sachin Sain, Advs.  
with Respondent in person.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE MADHU JAIN**

### **J U D G M E N T**

#### **MADHU JAIN, J.**

1. The present criminal appeal has been preferred by the State under Section 378 of the Code of Criminal Procedure, 1973, (*hereinafter*, 'CrPC') assailing the judgment (*hereinafter*, 'impugned judgment') dated 02.03.2016 passed by the Id. ASJ, North-West, Rohini District Courts, Delhi in ***Sessions Case No.66/2014*** arising out of ***FIR No.115/2014*** registered at P.S. Ashok Vihar.

2. *Vide* the impugned judgment, the Respondent/Accused-Phool Chand has been acquitted of charges under Section 3(d) of the Protection of Children from Sexual Offences Act, 2012, (*hereinafter*, 'POCSO')



punishable under Section 4 thereof and, in the alternative, under Section 376(2)(i) of the Indian Penal Code, 1860 (*hereinafter*, 'IPC'). The relevant portion of the impugned judgment dated 02.03.2016 is reproduced hereinbelow:

*“31. In view of the above discussion, it is hereby held that the accused is entitled to the benefit of doubt. The accused Phool Chand is accordingly acquitted of the charged offences. The accused, who is in J/C be set free forthwith, if not required to be detained in some other case.”*

### **FACTUAL MATRIX**

3. The prosecution case arises out of an incident alleged to have taken place on 23<sup>rd</sup> February, 2014, at about 9:00 p.m., at the house of the prosecutrix situated at Machhli Market, Wazirpur, Delhi. The prosecutrix, stated to be a minor child, was present in the house and was cooking food. At that time, the Respondent/Accused, who was related to her as her *Tauji* (paternal uncle) and whom she referred to as “*Bade Papa*”, allegedly entered the house and sent her younger brothers outside. Thereafter, the Accused/Respondent allegedly approached the prosecutrix, removed her *sameej*, pressed her breast and pushed her. The prosecutrix further alleged that he gagged her mouth with a cloth, caught hold of her hands, sat on her feet and, after removing her *salwar*, started licking her private parts.

4. According to the prosecution, the father of the prosecutrix reached the house during the incident and slapped the Respondent/Accused. Persons from the neighbourhood also gathered at the spot and gave beatings to the Respondent/Accused, whereafter he managed to flee from the spot. A call



2026:DHC:5405-DB



was thereafter made at 100 number. The first information conveyed to the police, however, was regarding a quarrel and not regarding sexual assault. In her statement Ex.PW-4/A, the prosecutrix stated that the call was made regarding quarrel as the matter involved family members and they wanted to resolve it at their own level.

5. Pursuant to the said call, DD No.25PP was recorded regarding quarrel near the dispensary at Wazirpur. SI Azad Singh (PW-12) reached the spot, where public persons produced the Respondent/Accused before him. The Respondent/Accused was taken to BJRM Hospital for medical examination and, as per MLC No. 74153 (Ex.PW-6/B), smell of alcohol was present in his breath. The said MLC No. 74153 is reproduced hereinbelow:

**बाबू जगजीवन राम स्मारक अस्पताल, दिल्ली-110033**  
**BABU JAGJIVAN RAM MEMORIAL HOSPITAL, DELHI-110033**

**101**

**MLC REGISTER**

**74153**

Name: Prashant Chandel      पिता/पति का नाम: Ramprasad      उम्र: 40yrs      लिंग: M      धर्म: Hindu      पेशा: Unemployed

Residence: VIII-Nikrandi, P.O-Kaplanganj, Dist-Ajmer      रिश्तादार का नाम: Dr. Sachin G. D. D.      तारीख: 3/6/14

Date and hour of arrival: 24/02/14 12:45 AM

No. and date of police report: DD-25 PP

Name of Constable: SI-Azad Singh      P.S.: Ashok Vihar

Date of admission: 24/02/14

Date of report sent to police: 24/02/14

**EXAMINATION:**  
 R/B Police for Medical Examination.  
 A/N/O Physical assault.  
 No BP, LOC, Babinski, vomiting, ENT Bleeding.  
 P/E: Patient is conscious and oriented.  
 SMI: smell of alcohol present in breath.  
 PR: 72/min  
 CR: 120/70mmHg  
 CXR: Normal  
 ECG: Normal  
 L/E: Swelling of left Periorbital and Pericardial region.  
 CLW: 20x20cm present over forehead.  
 Adv: Sutures, ASD  
 T.T. to Govt. Hospital  
 1st. X-ray Chest  
 2nd. X-ray Cervical  
 3rd. X-ray Lumbar  
 4th. X-ray Pelvis  
 5th. X-ray Hip  
 6th. X-ray Knee  
 7th. X-ray Ankle  
 8th. X-ray Wrist  
 9th. X-ray Hand  
 10th. X-ray Foot

Name of Injuries: OK

Name of Officer: Dr. Sachin G. D. D.

The kind of weapon used by person suspected in case poisoning: None

Signature of Examining Medical Officer



6. PW-12 thereafter returned to the spot and made inquiries; however, no allegation of sexual assault was disclosed to him at that stage. As per PW-12, the father of the prosecutrix stated that the quarrel had taken place on some personal matter which he did not wish to disclose at that time and that he wanted to compromise the matter with the Respondent/Accused.

7. On the following day, i.e., 24<sup>th</sup> February, 2014, the prosecutrix and her mother went to P.S. Ashok Vihar. On the directions of the SHO, SI Suman Bajaj (PW-13) made inquiry from them. The prosecutrix narrated the incident to PW-13, whereafter she was taken to BJRM Hospital for medical examination. Her statement was recorded as Ex.PW-4/A and, on the basis thereof, *rukka* was prepared and FIR No.115/2014, came to be registered.

8. During investigation, the prosecutrix was counselled by PW-1, her statement under Section 164 CrPC was recorded by the Id. Metropolitan Magistrate (PW-3), the site plan Ex.PW-4/C was prepared, the Respondent/Accused was arrested and medically examined, and the school record relating to the age of the prosecutrix was collected and proved as Ex.PW-11/A to Ex.PW-11/D. Upon completion of investigation, the charge-sheet was filed.

9. *Vide* order dated 5<sup>th</sup> April, 2014, charges were framed against the Respondent/Accused under Section 3(d) of the POCSO Act, punishable under Section 4 thereof and, in the alternative, under Section 376(2)(i) IPC. The Respondent/Accused pleaded not guilty and claimed trial.

10. In order to establish its case, the prosecution examined thirteen witnesses, including the prosecutrix/PW-4, her parents (PW-7 and PW-2), medical witnesses, police officials and other formal witnesses.

11. The central pillar of the prosecution case was the testimony of the



prosecutrix (PW-4) and her father (PW-7). The prosecutrix identified the Respondent/Accused as her paternal uncle/*Bade papa* and reiterated the allegation made in Ex.PW-4/A. She also deposed that though the police came to her house on the same night, she did not disclose the incident at that stage out of fear of a big quarrel. PW-7 deposed that he had returned home from his *rehri* between 8:00 p.m. and 9:00 p.m. and, upon opening the door of the *jhuggi*, saw the prosecutrix lying on the bed and the Respondent/Accused sitting on her legs and touching her chest area. He further stated that he slapped the Respondent/Accused, who thereafter fled, and that initially a call of quarrel was made to the Police Control Room. The relevant portion of statements of PW-4 and PW-7 and other relevant prosecution witnesses are reproduced hereinbelow:

<i>Witnesses</i>	<i>Statement In Chief Examination</i>	<i>Statement In Cross Examination</i>
<b>PW-4 Prosecutrix</b>	<i>...On 23.02.2014 between 9:00 - 10:00 PM, I was cooking food in my house. At that time accused Phool Chand, present in the Court today (witness has correctly identified the accused through the design in the wooden partition), who is related to me being my paternal uncle (Tau) and whom I call 'Bade Papa', entered in my house under the influence of liquor. Accused was residing with his son and daughter in law in the adjacent house of my</i>	<i>The accused is permanently residing with his son and daughter in law in the adjacent jhuggi of our jhuggi. He only comes in the said jhuggi to have food in the morning and night. It is correct that my father had asked the son of accused to vacate the said jhuggi many times and despite that has not vacated the said jhuggi. It is wrong to suggest that a dispute was going on between my father and the son of accused due to the said</i>



	<p><i>house. The said house is also owned by my father. My parents were present in their shop being the peak hours of sale. The shop is near to my house. My younger brothers were playing in the room. Accused asked them to go out of the house and to play in the gali. Accused initially told me that I should take bath and worship Saraswati Mata and thereafter he suddenly caught hold of my hand and starting laying his hand on my breast. Thereafter he made me to lie on the bed and climbed on me, sat on my knees and started licking my private parts. Accused put cloth in my mouth so that I could not raise alarm. At that time my father came in the house for taking something from the house and saw this scene and he gave 2 / 3 slaps to accused. In the meanwhile, persons from neighbourhood also collected there on hearing the noise and they also gave beatings to the accused. Police was called by my father by dialing 100 number. Police came at my house but I did not tell anything to the police at that time out of fear of a big quarrel.</i></p>	<p><i>reason.</i></p> <p><i>It is correct that police official had not recorded my statement but one Suman madam recorded my statement at PS Ashok Vihar on 24.02.2014. My statement Ex.PW-4/A was read over to me by Suman Madam, in my presence, police did not record statement of any witness.</i></p> <p><i>I had stated to the police in my statement that the accused was under the influence of liquor. Confronted with Ex.PW-4/A where it is not so recorded, however, it is recorded in my statement Ex.PW-3/B u/s.164 CrPC before the Court.</i></p> <p><i>At the time of incident, the door of the room was opened. My father reached there within 2/3 minutes. Many persons collected at the spot after the incident.</i></p> <p style="text-align: center;"><i>XXX</i></p> <p><i>My jhuggi / house is big one. Two rooms are constructed in the said jhuggi on the ground floor. It is correct that we used to cook food in the same room in which we were living. I never met IO after 24.02.2014. Police officials met me at my</i></p>
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	<p style="text-align: center;"><i>XXX</i></p> <p><i>On 24.02.2014, I told the entire incident to the police madam, who recorded my statement.</i></p> <p style="text-align: center;"><i>XXX</i></p> <p><i>I was taken to hospital for my medical examination where I refused for my internal medical examination vide my statement encircled at point "X" on MLC now exhibited as Ex.PW-4/B which bears my signatures at point "A". I had shown the place of incident to the police at my house and a site plan was prepared by the police which was also signed by me.</i></p>	<p><i>home on 24.02.2014 and thereafter at the hospital also.</i></p> <p><i>I did not sustain any injury when I fell on the floor when accused pushed me. I do not know if police had recovered anything from my house. I gave the same statement before learned MM which was given by me before the police madam.</i></p> <p><i>I had stated to the learned MM in my statement that accused had told me that he would bring samosas (eatables) and new clothes for me, however, I did not mention this fact in my statement Ex.PW-4/A to the police initially.</i></p>
<p><b>PW-7</b> <b>Father of</b> <b>the</b> <b>Prosecutrix</b></p>	<p><i>...On 23.02.2014 in the night hours at about 8:00 - 9:00 PM, I came back from my work to home to get some gol gappas due to shortage of the same at my rehri. The wooden door of my jhuggi was bolted with the help of big iron nail (keel) which could be opened from outside and inside the house. I opened the door by removing that nail and found that electricity bulb in the house was on. I saw that my daughter was lying on the bed and accused was sitting on her legs by folding his legs</i></p>	<p><i>... It is correct that I had not stated in my statement Ex.PW-7/DA before the police that "on 23.02.2014 in the night hours at about 8:00 - 9:00 PM, I came back from my work to home to get some gol gappas due to shortage of the same at my rehri and the wooden door of my jhuggi was bolted with the help of big iron nail (keel) which could be opened from outside and inside the house and I opened the door by removing that nail and found that electricity bulb in the house was on and that I</i></p>



	<p><i>and he was pressing the breast of my daughter by putting his hand in her shirt. I caught hold of the accused from behind and slapped him. The accused fled away from there. I out of anger, also gave slaps to my daughter P and inquired from her as to what had happened there. The public persons from neighbourhood collected there and the police was called. Initially the call of a quarrel was made to the control room. My daughter did not give her statement at that time but police officials from chowki came at my house and I along with my wife and daughter P were taken to PS where statement of my daughter was recorded. My daughter was taken to hospital also for her medical examination. My statement was recorded by the police. Accused Phool Chand is my brother in relation. I can identify the accused, who is present in the Court today (witness has correctly identify the accused).</i></p>	<p><i>saw that my daughter was lying on the bed."</i></p> <p><i>My jhuggi / house is big one of 30 / 32 ft. in length and there are three rooms in my jhuggi of 7 x 7 ft. There is no separate kitchen in the house and we cook food in the room itself. I have let out one room in the front side of my jhuggi to the son of accused two - three months prior to the incident. It is incorrect to suggest that I had asked the son of accused to vacate the room or that I have falsely Implicated by the accused in the present case just to create pressure upon the son of accused to vacate the said room. IO did not record the statement of any other witness in my presence. I kept sitting in the police course when my daughter was taken to the hospital with my wife by the police. At present I have two rooms of my jhuggi in my possession, in one room we cook the food and my family sleeps and in other room I sleep.</i></p>
<p><b>PW-2 Mother of Prosecutrix</b></p>	<p><i>I do not remember the month; but this year on 23<sup>rd</sup> day, accused Phool Chand, present in the court today (correctly Identified) had done chedchad</i></p>	<p><i>It is correct that on the alleged date, I was not present at my house. I had gone to Azadpur to bring some articles. It is correct that I</i></p>



	<p><i>with my daughter P. A quarrel took place thereafter and someone called the police. Police came and took the accused with them. On next day, my daughter P was taken for medical examination to hospital and I accompanied her. Statement of my daughter was recorded In PS. Police took the accused with them.</i></p> <p style="text-align: center;"><i>XXX</i></p> <p><i>It is correct that the incident had taken place on 23<sup>rd</sup> February, this year. It is correct that the statement of my daughter was recorded in the hospital. It is correct that my daughter had pointed out the place of Incident to the Police and site plan was prepared at her pointing out by the police. It is correct that police had prepared some documents, when accused was arrested.</i></p>	<p><i>myself had not seen the incident. stated to me regarding the quarrel. My statement was recorded by the police on 24.02.2014 at Police Chowki as well as PS. My statement was read over to me by the police. I do not remember, what other statements were recorded by the police in my presence. It is correct that I did not mention the date of the incident in my statement to the police. Police officials met us at police post. I do not remember, if the police officials visited my house or not. <b>It is correct that son of the accused has been residing in the jhuggie adjacent to my jhuggie.</b> It is correct that said jhuggie belongs to us. Son of the accused was not asked to vacate the said jhuggie by us. <b>There is no quarrel between us and son of accused regarding vacating the said jhuggie.</b></i></p>
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12. The medical evidence in respect of the prosecutrix was proved through PW-8 Dr. Neeraj Chaudhary and PW-10 Dr. R. Kappu. The MLC of the prosecutrix, bearing No.74206 (Ex.PW-4/B), records that she was brought to BJRM Hospital on 24<sup>th</sup> February, 2014 by the IO for medical



examination. PW-10 further deposed that, as per the said MLC, the mother of the prosecutrix had refused internal gynaecological examination. The relevant portion of the MLC of the prosecutrix is reproduced hereinbelow:

*(24/2/14) (4 PM)*

- *Case B/D police for medical gynaecological examination*
- *A/H/O touching of private parts of this Pt. by phool Chand(neighbour) (B/L BREAST) ON 23.2.14 AT 9 PM*
- *A/H/O licking of vagina of this Pt tongue by phoolchand on 23.2.14 at 9Pm*
- *No H/o Vaginal penetration by his penis.*
- *H/O Verbal abuse.*
- *NOH/O Touching of vagina and penis*
- *NOH/O Bleed from area of body*
- *NOH/O Scratch marks anywhere*
- *LMP: 26/1/14*

*मैं अपनी मर्जी से अपने शरीर की जाँच नहीं कराना चाहती क्योंकि मेरे शरीर के आंतरिक अंगों के साथ शारीरिक संबंध नहीं हुआ।*

13. After closure of prosecution evidence, the statement of the Respondent/Accused under Section 313 CrPC was recorded. He denied the incriminating circumstances and claimed that he had been falsely implicated by the prosecutrix at the instance of her parents.

14. In defence evidence, the Respondent/Accused examined Ram Nath Sahu (DW-1), who deposed that there was a dispute between the Respondent/Accused and PW-7 father of prosecutrix on account of rent and that, on the date of the incident also, a quarrel had taken place between them



due to non-payment of rent. In cross-examination, DW-1 admitted that he had not seen the incident inside the house.

15. Upon an appreciation of the evidence on record, the Id. Trial Court held that the prosecution had failed to satisfactorily explain the circumstances in which the allegation of sexual assault was not disclosed at the earliest opportunity, despite the police having reached the spot on the night of 23<sup>rd</sup> February, 2014 pursuant to DD No.25PP. The Id. Trial Court noted that the first information received by the police was only in respect of a quarrel; that PW-12 SI Azad Singh had reached the spot and made inquiries; and that the father of the prosecutrix had, at that stage, stated that the quarrel pertained to some personal matter which he did not wish to disclose and that he intended to compromise the matter with the Respondent/Accused. In these circumstances, the Id. Trial Court was of the view that the possibility of a coloured version having subsequently come on record could not be ruled out.

16. The Id. Trial Court also considered the defence plea that the Respondent/Accused had been falsely implicated on account of a dispute relating to the tenanted *jhuggi*. It noticed that the prosecution case rested essentially on the testimony of the prosecutrix and her parents, without any independent corroboration. Having regard to the surrounding circumstances, including the admitted dispute regarding the *jhuggi* and the initial reporting of the matter as a quarrel, the Id. Trial Court held that the possibility of false implication could not be excluded. It accordingly extended the benefit of doubt to the Respondent/Accused and acquitted him of the offences under



Section 3(d) read with Section 4 of the POCSO Act and, in the alternative, under Section 376(2)(i) IPC.

17. Aggrieved by the aforesaid judgment of acquittal, the State has preferred the present appeal.

**SUBMISSIONS ON BEHALF OF THE APPELLANT**

18. Ld. APP by placing reliance on the testimony of the prosecutrix/PW-4 submits that the prosecutrix, who was a minor at the relevant time, consistently supported the prosecution case during investigation as well as before the Id. Trial Court. Ld. APP further submits that the prosecutrix clearly narrated the occurrence before the Id. Trial Court and specifically identified and stated that the Respondent/Accused entered the *jhuggi* while her parents were away and thereafter committed the alleged sexual assault. Reliance is also placed on her statement under Section 164 CrPC and the history recorded in her MLC to contend that her version remained substantially consistent.

19. Ld. APP further submits that the testimony of the prosecutrix stood corroborated by PW-7, her father, who reached the *jhuggi* during the incident and found the Respondent/Accused present with the prosecutrix under incriminating circumstances. It is submitted that the Id. Trial Court failed to accord due weightage to the testimony of PW-7.

20. Ld. APP submits that the Id. Trial Court erred in treating the delay in disclosure and registration of the FIR as fatal. According to him, the Respondent/Accused was a close family member, the incident was immediately followed by a quarrel, and the initial hesitation in disclosure stood sufficiently explained by the prosecutrix.



21. Ld. APP also assails the reliance placed by the ld. Trial Court on the defence plea of false implication arising out of the alleged dispute regarding the adjoining *jhuggi*. He submits that the suggestions put to the prosecution witnesses in this regard were denied and the defence failed to substantiate the said plea by cogent evidence.

22. Lastly, ld. APP submits that conviction in a case of sexual assault can be based on the sole testimony of the prosecutrix, if the same inspires confidence. Reliance is placed on *State of Punjab v. Gurmit Singh & Ors., (1996) 2 SCC 384*, to contend that the ld. Trial Court ought not to have discarded the testimony of the prosecutrix on speculative grounds.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT/ACCUSED**

23. Ld. counsel appearing on behalf of the Respondent/Accused, supports the impugned judgment and submits that the ld. Trial Court has rightly appreciated the evidence on record and extended the benefit of doubt to the Respondent/Accused. He submits that the prosecution case suffers from material inconsistencies, unexplained delay in disclosure, and absence of independent corroboration; therefore, no interference with the judgment of acquittal is warranted.

24. Ld. counsel submits that though the alleged incident is stated to have occurred on 23<sup>rd</sup> February, 2014, no allegation of sexual assault was disclosed when the police reached the spot pursuant to the PCR call made by PW-7. He points out that the PCR call was admittedly in respect of a quarrel, and PW-12 SI Azad Singh deposed that the father of the prosecutrix had informed him that the matter was personal in nature and that they intended to compromise the same. It is, therefore, submitted that the allegation of sexual



assault surfaced only on the following day, after deliberation and consultation, and the Id. Trial Court rightly held that the possibility of a coloured version could not be ruled out.

25. Ld. counsel further submits that there are material improvements in the statements of the prosecutrix recorded under Sections 161 and 164 CrPC and in her deposition before the Court. He submits that certain facts, namely that the Respondent/Accused was under the influence of liquor, that he had asked the prosecutrix to worship Saraswati Mata, and that he had promised to bring samosa and clothes for her, were not stated in the initial statement but were subsequently introduced. He submits that these improvements are material and affect the credibility of the prosecution version.

26. Ld. counsel also points to material inconsistencies between the testimonies of PW-4 and PW-7. He submits that while PW-7 stated that the wooden door of the *jhuggi* was bolted with an iron nail and that he opened it from outside, the prosecutrix stated in cross-examination that the door was already open. He further submits that PW-7 did not depose to having seen the specific act alleged by the prosecutrix and that his testimony, even if accepted, does not establish the charge framed against the Respondent/Accused.

27. Ld. counsel submits that the defence plea of false implication arising out of the dispute concerning the adjoining *jhuggi* finds support from the record. He places reliance on the cross-examination of PW-4, wherein she admitted that her father had repeatedly asked the son of the Respondent/Accused to vacate the *jhuggi*. Reliance is also placed on the testimony of DW-1 Ram Nath Sahu, who deposed that disputes had taken place between the Respondent/Accused and PW-7 regarding non-payment of



rent. He submits that in these circumstances, the Id. Trial Court rightly held that the possibility of false implication could not be ruled out.

28. Lastly, Id. counsel submits that the mother of the prosecutrix refused internal gynaecological examination and no forensic or DNA evidence was collected during investigation. According to him, despite the seriousness of the allegation, the prosecution failed to produce any scientific or forensic corroboration in support of its case.

### **ANALYSIS AND FINDINGS**

29. This Court has considered the submissions advanced by the Id. counsel for the parties and has perused the evidence on record.

30. Before delving into the examination of evidence on record, it would be apposite to briefly discuss the settled principles governing interference in an appeal against acquittal. In *Mallappa v. State of Karnataka, (2024) 3 SCC 544*, the Supreme Court reiterated that though the Appellate Court has the power to reappreciate the evidence in an appeal against acquittal, such power must be exercised with caution. Unless the view taken by the Id. trial court is found to be perverse, impossible, or contrary to the evidence on record, the order of acquittal ought not to be interfered with merely because another view is possible.

31. The present appeal is, therefore, required to be examined on the touchstone of the aforesaid principles. Suspicion, however grave, cannot be permitted to take the place of proof beyond reasonable doubt. Where the evidence on record admits of a possible view in favour of acquittal, such view cannot be disturbed merely because another view may also be possible.



32. The Respondent/Accused was charged under Section 3(d) of the POCSO Act, punishable under Section 4 thereof, and, in the alternative, under Section 376(2)(i) IPC. The relevant provisions are reproduced hereinbelow:

**POCSO ACT, 2012 (Prior to POCSO (Amendment) Act, 2019)**

***“3. Penetrative sexual assault*** —*A person is said to commit “penetrative sexual assault” if—*

.....

*(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”*

***“4. Punishment for penetrative sexual assault—***

*Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.”*

**IPC, 1860 (Prior to Criminal Law (Amendment) Act, 2018):**

***“376. Punishment for rape.***

*(2) Whoever,*

*(i) commits rape on a woman when she is under sixteen years of age; or*

.....

*shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.”*



33. Having noticed the statutory provisions, this Court may now advert to the ingredients which the prosecution was required to establish. In order to sustain a charge under Section 3(d) of the POCSO Act, the prosecution was required to prove, firstly, that the prosecutrix was a child within the meaning of the Act; secondly, that the act alleged against the Respondent/Accused fell within the scope of Section 3(d); and thirdly, that the said act was committed by the Respondent/Accused.

34. As regards the alternative charge under Section 376(2)(i) IPC, as applicable on the date of the alleged incident, the prosecution was required to prove that the act amounted to rape within the meaning of Section 375 IPC; that the prosecutrix was below 16 years of age; and that the Respondent/Accused was the person who committed the said act.

35. Insofar as the age of the prosecutrix is concerned, the prosecution examined PW-11, who produced the relevant school record showing her date of birth as 17<sup>th</sup> April, 2001. The alleged incident took place on 23<sup>rd</sup> February, 2014. The mere absence of a municipal birth certificate would not, by itself, be fatal to the prosecution case, if the school record otherwise establishes the age of the prosecutrix. In the present case, the school record having shown that the prosecutrix was a minor on the date of the alleged incident, the prosecution has established that she was a “child” within the meaning of the POCSO Act and was below 16 years of age on the date of the alleged incident.

36. As regards the legal character of the allegation, if the version of PW-4 is accepted as proved in the manner alleged, the act complained of would fall within the statutory description of the charged offence under Section 3(d) of



the POCSO Act and would also attract consideration under the alternative charge under Section 376(2)(i) IPC.

37. However, proof of age and the legal character of the allegation do not, *ipso facto*, establish the commission of the offence. The prosecution was still required to establish, beyond reasonable doubt, the occurrence of the alleged act, its nature, and the involvement of the Respondent/Accused therein. The presumption under Section 29 of the POCSO Act would arise only upon proof of such foundational facts and cannot be invoked to fill material gaps in the prosecution evidence.

38. Ld. APP placed reliance on *State of Punjab v. Gurmit Singh & Ors., (1996) 2 SCC 384*, to submit that the testimony of the prosecutrix, if reliable and inspires confidence, can form the sole basis of conviction, and that corroboration is not a rule of law. There can be no quarrel with the said proposition. The testimony of the prosecutrix is not to be viewed with suspicion, nor does this Court insist upon corroboration as a matter of routine.

39. However, *Gurmit Singh (supra)* does not dilute the fundamental requirement that such testimony must inspire confidence and must prove the charge beyond reasonable doubt. Therefore, the question is not whether conviction can ever be based on the sole testimony of the prosecutrix. Undoubtedly, it can. The real question is whether, in the present case, the testimony of the prosecutrix, when tested against the other evidence on record and the surrounding circumstances, is of such quality that it can form the basis for reversing an order of acquittal.

40. This court has perused the statements and testimonies of the witnesses on record. The prosecution case substantially rests on the evidence of PW-4,



the prosecutrix, and PW-7, her father. PW-4 is the principal witness. Her testimony has to be examined with the sensitivity required in cases involving a child witness. At the same time, such sensitivity does not dispense with the judicial duty to examine whether the evidence, as a whole, satisfies the standard of proof required in criminal law.

41. The testimony of PW-4 is required to be examined first in the light of her earliest statement. A comparative reading of the earliest statement of PW-4, Ex.PW-4/A, her statement under Section 164 CrPC (Ex.PW-3/B) and her deposition before the Court shows that certain particulars were absent in Ex.PW-4/A, but were introduced at the stage of Section 164 CrPC (Ex.PW-3/B) and were thereafter repeated in Court. These include the allegations that the Respondent/Accused was under the influence of liquor, that he had asked her to take a bath and worship Saraswati Mata, and that he had offered to bring eatables and new clothes. These additions, therefore, constitute improvements over her earliest version. The relevant portion of her statement and testimony is reproduced herein below:

<i>Statement in Ex.PW-4/A</i>	<i>Statement u/s 164 CrPC (Ex.PW-3/B)</i>	<i>Statement in Chief Examination</i>
.....कल Dt 23/02/14 को मैं रात के समय करीब 9:00 PM पर खाना बना रही थी। तो उसी समय मेरे ताऊ जी, जिनको मैं बड़े - पापा बोलती हूँ। जिसका नाम फूलचन्द है। जो हमारे पड़ोस में अपने बेटे और बहु के साथ रहता है। मेरे पास आया मेरे दो छोटे भाईयो जिनकी उम्र	मैं "sunday" को घर पर रात की खाना बना रही थी, मेरे बड़े पापा फूल चन्द घर आए। उन्होंने दारू पी। फिर उन्होंने बोला कि मैं सुबह पूजा किया करूँ और वो मुझे समोसा और नए कपड़े ला कर देंगे। फिर उन्होंने मेरे भाइयो को भगा दिया। और मेरे साथ छेड़छाड़ करने लगे। फिर	.....I call 'Bade Papa', entered in my house under the influence of liquor. Accused was residing with his son and daughter in law in the adjacent house of my house. The said house is also owned by my father. My parents were present in their shop being the peak hours of sale. The



<p>10 साल और 7 साल है को बाहर भगा दिया। फिर उसने मेरा समीज हटा कर मेरी छाती पर हाथ फेरने लग गया। और मुझे धक्का मारा मैं गिर गई और मेरे मुँह में कपडा डाल दिया और मेरे हाथ दबा दिये। मेरे पैरो पर बैठ गया और मेरी सलवार निकाल कर मेरे पेशाब करने वाली जगह को चाटने लगा। तभी मेरे पापा आ गये। मेरे पापा ने उसको थप्पड़ मारे वो भागने लग गया तभी और व्यक्ति वहाँ आ गए जिन्होंने उसको काफी मारा। फिर वो वहाँ से भाग गया। उसके बाद मेरे पापा ने 100 न० पर call कर दी।</p>	<p>मुझे धक्का देकर गिरा दिया और मेरे पाँवों पर बैठ गए। मेरा पजामा खोल दिया उन्होंने मेरे मुँह में कपड़े ठूस दिए।</p> <p>फिर वो मुझे चाटने लगे। फिर वो मेरे नीचे जहाँ से Bathroom करते हैं, को मुँह से चाटने लगे। फिर मेरे पापा आ गए उन्होंने बड़े पापा को एक चाटाँ लगाया, वो भाग गए। मेरे साथ यही सब हुआ था। मुझे यही बताना था।</p>	<p><i>shop is near to my house. My younger brothers were playing in the room. Accused asked them to go out of the house and to play in the gali. Accused initially told me that I should take bath and worship Saraswati Mata and thereafter he suddenly caught hold of my hand and starting laying his hand on my breast. Thereafter he made me to lie on the bed and climbed on me, sat on my knees and started licking my private parts. Accused put cloth in my mouth so that I could not raise alarm.</i></p>
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42. The aforesaid additions relate to surrounding particulars and are not being treated as conclusive by themselves. The fact that they were repeated before the Id. Magistrate and thereafter in Court lends consistency to the later version. However, it does not erase their absence from the earliest statement. These additions are, therefore, relevant only in the cumulative assessment of the reliability of PW-4's testimony. They do not, standing alone, demolish the prosecution case, however, they cannot be ignored while assessing whether the testimony is sufficiently reliable to justify appellate interference.

43. A more material inconsistency emerges when the testimony of PW-4 is read with that of PW-7 regarding the condition of the door. PW-4 stated



that, at the time of the incident, the door of the room was open. PW-7, however, stated that the wooden door was bolted with a big iron nail and that he opened it by removing the nail. This contradiction is not a matter of detail. PW-7 claims to have reached the spot during the occurrence. The condition of the door and the manner in which he entered the room have a direct bearing on the reliability of his version.

44. This court finds that the testimony of PW-7, the father of the prosecutrix, also suffers from material omissions. In his earlier statement, Ex.PW-7/DA, though PW-7 had stated that he had returned to his *jhuggi*, he had not stated that he had returned home to get some *gol gappas* due to shortage of the same at his *rehri*, that the wooden door of the *jhuggi* was bolted with a big iron nail, that the said door could be opened from outside and inside, that he opened the door by removing the nail, that the electricity bulb was on, or that he saw the prosecutrix (PW-4) lying on the bed. These omissions relate to the very manner in which PW-7 claims to have reached the spot and witnessed the incident. If PW-7 had witnessed the occurrence in the manner deposed by him before the Court, these facts were material enough to have been stated at the earliest stage. Their absence from Ex.PW-7/DA weakens his claim of being an eyewitness. The relevant portion of his statement and testimony is reproduced hereinbelow:

<i>Witness</i>	<i>Statement in Ex.PW-7/DA</i>	<i>Statement in Chief Examination</i>
<b>PW-7 Father of the Prosecutrix</b>	बयान किया है कि मैं पता उपरोक्त पर अपने परिवार के साथ रहता हूँ। और छोले गोल गप्पे की रेहड़ी मच्छली मार्किट में ही लगाता हूँ। व [REDACTED] मेरी	<i>...On 23.02.2014 in the night hours at about 8:00 - 9:00 PM, I came back from my work to home to get some gol gappas due to shortage of the same at my rehri. The</i>



	<p>बेटी है। कल मैं अपनी रेहड़ी से वापस अपनी झुग्गी में आया तो मैंने देखा कि फूलचन्द मे बेटी के पैरो पर बैठा हुआ है और उसकी छाती को दबा रहा है। मैंने फूलचन्द को पकड़ा और उसको थप्पड़ मारे तो वो वहाँ से भाग गया फिर मैं अपन झुग्गी में आया। जो आज हम सब आपके पास आये और कल वाली सारी बाते आपको बताई।</p> <p>आपने मे बयान लिखा जो सुन लिया ठीक है।</p>	<p><i>wooden door of my jhuggi was bolted with the help of big iron nail (keel) which could be opened from outside and inside the house. I opened the door by removing that nail and found that electricity bulb in the house was on. I saw that my daughter was lying on the bed and accused was sitting on her legs by folding his legs and he was pressing the breast of my daughter by putting his hand in her shirt. I caught hold of the accused from behind and slapped him. The accused fled away from there. I out of anger, also gave slaps to my daughter P and inquired from her as to what had happened there. The public persons from neighbourhood collected there and the police was called.</i></p>
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45. The account of PW-7 is also narrower than the version of PW-4. While PW-4 stated that her father saw the incident, PW-7 does not fully corroborate the complete act forming the subject matter of the charge. At the highest, the testimony of PW-7 corroborates the presence of the Respondent/Accused inside the *jhuggi* and lends support only to the extent that there was inappropriate physical contact with the prosecutrix. However, it does not furnish independent assurance to the complete version of PW-4. This is material because PW-7 is not a witness who reached after the



incident. He claims to have entered during the occurrence itself. His evidence was, therefore, expected to lend clarity to the prosecution version. Instead, it leaves a material gap in the prosecution evidence.

46. This Court is conscious that PW-4 was a child and that her hesitation in making an immediate disclosure may be understandable. However, PW-7 was an adult and the father of the prosecutrix. He claims to have reached the spot during the occurrence. His failure to disclose the allegation to the police at the first available opportunity, and his statement that the matter was merely a family quarrel which was to be settled amongst themselves, is difficult to reconcile with his claim of having witnessed the alleged incident.

47. A perusal of the testimony of PW-2, the mother of the prosecutrix, shows that her evidence is not of the occurrence itself. She was admittedly not present in the house when the alleged incident took place. She had not seen the incident and was informed only about a quarrel by a neighbour. Her testimony proves, at best, the subsequent movement of the parties to the police station and hospital; it does not prove the occurrence itself. Thus, the testimony of PW-2 cannot be treated as corroboration of the act alleged against the Respondent/Accused.

48. The testimony of PW-12 SI Azad Singh is relevant, as it records the first police response on the night of the alleged incident. He deposed that DD No.25PP, relating to a quarrel, was marked to him for enquiry. On reaching the spot, he found public persons present and the Respondent/Accused produced before him in an injured condition. He took the Respondent/Accused to BJRM Hospital for medical examination and, thereafter, returned to the spot to ascertain the cause of the quarrel. According to PW-12, the father of the victim child then stated that the



quarrel had arisen out of some personal matter which he did not wish to disclose, and that he wanted to settle the matter with the Respondent/Accused. The relevant portion of his testimony is reproduced hereinbelow:

<i>Witness</i>	<i>Statement In Chief Examination</i>
PW-12 SI Azad Singh PS Ashok Vihar.	<i>On 23.02.2014, I was posted at PR WPIA, PS Ashok Vihar. On that day, DD No.25PP regarding quarrel near dispensary was entrusted to me for enquiry. Said DD is now Ex.PW12/A. I reached at the spot at N-28, D-9, Machli Market, Wazirpur, Delhi, where I met Ct. Sachin, who had just reached before me there. <b>Public persons were also present and had produced one person namely Phool Chand, i.e accused who is present in court today (correctly identified by the witness). Accused was given beatings by the public persons. I took the accused to BJRM Hospital and got him medically examined as the accused had sustained injuries on his head. I collected the MLC of accused which is already Ex.PW6/B and as per the MLC smell of alcohol was present in his breath. After his medical examination, we came back at the spot with accused. Thereafter, I made enquiries about the cause of quarrel. None came forward to tell me about anything. Father of the victim child told me that there was a quarrel on some personal matter which he did not want to disclose at that time and he wanted to compromise the matter with accused.</b></i>

49. A reading of the above testimony makes clear the nature of the first disclosure made to the police. As per PW-12, when inquiries were made on the night of the incident itself, the matter was stated to be a quarrel on some personal issue which PW-7 did not wish to disclose and wanted to settle with the Respondent/Accused. The allegation which forms the basis of the FIR



was not disclosed at that stage. It surfaced only on the following day, i.e., 24<sup>th</sup> February, 2014. Thus, the earliest version placed before the police was one of a personal quarrel and not of the offence subsequently alleged in the FIR.

50. Delay in lodging an FIR, particularly in cases involving sexual offences, cannot by itself be treated as fatal, if the delay is satisfactorily explained. However, the present case is not merely one of delayed reporting. The police had reached the spot on the very date of the incident, yet what was reported was only a quarrel. The explanation of fear may explain the initial hesitation of PW-4 to some extent. It does not explain the conduct of PW-7, who was an adult, claimed to have witnessed the incident, and yet described the matter to the police as a personal quarrel. The prosecution has not satisfactorily explained this conduct. This circumstance, therefore, bears directly upon the reliability of the prosecution version.

51. The testimony of PW-5 also accords with the earliest version that the incident was reported as a quarrel or family dispute. PW-5, the PCR official, deposed that on receipt of information regarding quarrel, he reached the spot and, upon inquiry, came to know that it was a family dispute. This evidence is consistent with the testimony of PW-12 and the initial DD entry, and not with the allegation subsequently made on the following day. The relevant portion of PW-5's testimony is reproduced herein below:

<i>Witness</i>	<i>Statement In Chief Examination</i>
PW-5 HC Ajeet	<i>On 23.02.2014, I was posted as Incharge PCR of Commandor II and my base point was at Computer Market, Wazirpur Industrial Area and my duty hours were from 8:00 PM to 8:00 AM. On that day at about</i>



*09:56 PM, an information from wireless was received by me regarding quarrel at B-65, near Dispensary, Krish Automobile, Wazirpur. I along with staff reached at the said place in the PCR Van and on inquiry at the spot, I came to know that it was a family dispute and no one became injured in the said quarrel. Local Police also reached there to whom I handed over the spot and, came back at our base point. I flashed this message on wireless to PCR Control Room.*

52. The prosecution evidence is also required to be viewed in the light of the admitted presence of public persons at the spot. It is the prosecution case itself that neighbours and public persons had gathered at the spot and had beaten the Respondent/Accused. However, none of such persons have been examined. It is true that non-examination of independent witnesses is not fatal in every case. It is equally true that the evidence of related witnesses cannot be discarded merely on the ground of relationship. However, where the prosecution evidence requires cautious scrutiny and independent persons were admittedly present at the spot, the non-examination of even one such witness becomes a relevant circumstance.

53. In *Periyasamy v. State, 2024 SCC OnLine SC 314*, the Supreme Court held that non-examination of independent witnesses is not *per se* fatal, but where the witnesses examined are interested or their evidence requires careful scrutiny, examination of independent witnesses assumes importance. It was further held that such lapses, when considered cumulatively with other infirmities, may affect the sanctity of the prosecution case and make it fall short of the threshold of proof beyond reasonable doubt. The relevant portion of the judgment is reproduced hereinbelow:



*“22. It is a well-recognised principle in law that the non-examination of independent witnesses would not be fatal to a case set up by the prosecution. The difference between a witness who is “interested” and one who is “related” stand explained by a Bench of three learned Judges in State of Rajasthan v. Kalki:*

*“7. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested.”*

xxx

*24. In other words, if witnesses examined are found to be ‘interested’ then, the examination of independent witnesses would assume importance.”*

54. In the present case, the above-mentioned principle squarely applies. The presence of public persons at the spot is not a matter of conjecture but forms part of the prosecution record. When such persons had admittedly gathered and allegedly beaten the Respondent/Accused, which is also supported by the injuries found on him, the examination of at least one independent witness would have been material. The failure of the prosecution to examine any such witness deprives the Court of independent assurance on the occurrence and reinforces the doubt arising from the prosecution evidence itself.

55. In the same factual backdrop, the defence plea also requires consideration. The defence has sought to rely upon the dispute relating to the adjoining *jhuggi*. PW-4 admitted in cross-examination that her father had asked the son of the Respondent/Accused to vacate the adjoining *jhuggi*



several times. PW-7 also admitted that he had let out one room in the front side of his *jhuggi* to the son of the Respondent/Accused two-three months prior to the incident, though he denied any false implication on that ground. DW-1 Ram Nath Sahu also deposed regarding disputes between the parties in connection with rent, though he admitted that he had not seen the incident inside the house.

56. The defence evidence, by itself, may not be sufficient to establish false implication. However, the burden on the defence is not to prove its case beyond reasonable doubt. The defence is only required to create a reasonable doubt or show a probability which may render the prosecution version doubtful. In the present case, when the admitted background regarding the *jhuggi* is read with the first information of quarrel, the conduct of PW-7, and the absence of any disclosure to the police on the night of the incident, the defence plea cannot be brushed aside as wholly fanciful or baseless.

57. This Court now proceeds to consider the medical evidence on record. The medical evidence also does not advance the prosecution case. The prosecutrix was taken to BJRM Hospital on 24<sup>th</sup> February, 2014. The relevant MLC of the prosecutrix is MLC No.74206, Ex.PW-4/B. PW-10 deposed that, as per the said MLC, the mother of the prosecutrix refused internal gynaecological examination. No adverse inference can be drawn against the prosecutrix or her family on account of such refusal. However, the consequence remains that there is no medical or forensic material corroborating the charge levelled against the Respondent/Accused.

58. The MLC of the Respondent/Accused records smell of alcohol and injuries. This establishes, at the highest, that the Respondent/Accused had consumed alcohol and had sustained injuries after being beaten by public



persons. It does not establish the commission of the offence charged. The medical evidence is, therefore, consistent with the admitted occurrence of a quarrel and the beating of the Respondent/Accused, but it does not prove the specific offence alleged against him.

59. The Appellant has contended that medical corroboration is not indispensable where the ocular testimony is reliable. The proposition is well settled and admits of no dispute. However, the said proposition does not assist the prosecution where the oral evidence itself requires assurance from surrounding circumstances.

60. In the present case, the medical evidence is neutral, independent public evidence is absent, and the first police interaction does not support the allegation subsequently made. The issue, therefore, is not whether medical corroboration was mandatory. The issue is whether, in its absence, the oral evidence is sufficiently cogent, consistent and reliable to prove the charge beyond reasonable doubt. This Court is unable to so hold.

61. This Court finds that the doubt in the present case is not speculative, but arises from the prosecution evidence itself. The additions in PW-4's version over the earliest statement Ex.PW-4/A, though maintained from the stage of Section 164 CrPC (Ex.PW-3/B) onwards, the omissions in PW-7's earlier statement, the contradiction regarding the condition of the door, the first information being only of a quarrel, the non-examination of public witnesses, the neutral medical evidence and the admitted background dispute, when read together, prevent the prosecution case from crossing the threshold of proof beyond reasonable doubt.

62. In these circumstances, though the testimonies of PW-4 and PW-7 cannot be discarded outright, they do not inspire the confidence necessary to



warrant interference with the judgment of acquittal. The evidence on record establishes that an incident and a quarrel took place on 23<sup>rd</sup> February, 2014, however, it does not establish, with the certainty required in criminal law, that the Respondent/Accused committed the charged offences in the manner alleged.

63. Consequently, the statutory presumption under Section 29 of the POCSO Act cannot be invoked in the present case. Since the prosecution evidence itself leaves reasonable doubt regarding the manner of occurrence and the involvement of the Respondent/Accused, the foundational facts necessary for drawing the presumption have not been established.

64. Applying the principles in *Mallappa (supra)*, this Court would not be justified in reversing the acquittal. The view taken by the Id. Trial Court is a possible view borne out from the evidence on record and cannot be said to be perverse, impossible, or contrary to the record.

### **Conclusion**

65. This Court, therefore, holds that the Id. Trial Court did not adopt an impossible or perverse view of the evidence. The appreciation of evidence by the Id. Trial Court is borne out from the material on record. Even if two views were possible, the view favouring the Respondent/Accused has already been accepted by the Id. Trial Court, and no compelling reason has been made out for this Court to interfere with the same.

66. Accordingly, this Court finds no ground to interfere with the impugned judgment of acquittal dated 2<sup>nd</sup> March, 2016. The acquittal of the Respondent/Accused-Phool Chand for the offence under Section 3(d) of the



2026:DHC:5405-DB



POCSO Act, punishable under Section 4 thereof, and, in the alternative, under Section 376(2)(i) IPC, is upheld.

67. The appeal is dismissed. Pending application(s), if any, stand disposed of.

**MADHU JAIN  
JUDGE**

**PRATHIBA M. SINGH  
JUDGE**

**JULY 7, 2026/m**